

KEVIN SIMMONS

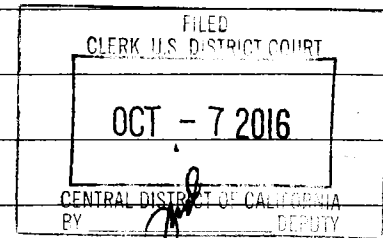
P-23096, C2-124, CSP

P.O. Box-4610

LANCASTER CA. 93539

ACTING IN PRO PER

"ORIGINAL"



UNITED STATES DISTRICT COURT CENTRAL
DISTRICT OF CALIFORNIA
CENTRAL DISTRICT

KEVIN SIMMONS

Plaintiff,

V.

G. ARNETT, et al.,

Defendant

CASE No. 2:16-cv-02858 R-KES

Plaintiff's First Amended

Complaint, stating an eighth

Amendment excessive force

claim, and state fact why the

Defendant is not entitled to

Qualified Immunity.

DATE: NOV. 1, 2016

TIME: 10:00 am

Courtroom: 6D

Judge: Honorable KAREN E. SCOTT.

Come's now the Plaintiff KEVIN SIMMONS
with his First Amended Complaint, Acting in pro per
ATTEMPTING TO CORRECT AND ADDRESS THE PLEADING DEFECTS
if ANY ASSERTED in the Defendant's Motion to Dismiss

THE STATING OF EIGHTH AMENDMENT
CLAIM OF EXCESSIVE FORCE

THE PLAINTIFF KEVIN SIMMONS IS A INMATE AT THE CALIFORNIA STATE PRISON LOCATED IN LANCASTER CALIFORNIA ("LAC") WHERE THE PLAINTIFF INJURYS OCCURRED THE PLAINTIFF ACTING IN PRO PER, WITH NO TRAINING IN THE MATTER OF LAW, INITIATED THIS CLAIM UNDER 42 U.S.C § 1983 ON APRIL 26, 2016.

IN THE COMPLAINT THE PLAINTIFF ASSERTS A CLAIM AGAINST DEFENDANT ARNETT FOR EXCESSIVE FORCE IN VIOLATION OF HIS EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT, ARISING FROM BEING PHYSICALLY ASSAULTED.

A CORRECTION OF WORD "MUTUAL COMBAT" IN COMPLAINT PG. 2-LINE-24. THERE WAS NO COMBAT, THE PLAINTIFF NEVER EVEN THREW ONE PUNCH. AFTER BEING SUCKER PUNCHED BY INMATE MURRILLO I WAS DAZED, AND AT THE EXACT SAME TIME, THE DEFENDANT ARNETT FIRED HIS FIRST SHOT HITTING THE PLAINTIFF IN HIS LEFT LEG.

THE ROUND HIT LOW ON MY LEG KNOCKING ME TO MY KNEES, WHILE THE INMATE CONTINUE TO PUNCH THE PLAINTIFF IN THE FACE AND HEAD. THIS ALTERCATION TOOK PLACE WHEN INMATE MURRILLO ASSAULTED THE PLAINTIFF ON NOV. 28, 2013. WHILE INMATE MURRILLO WAS REPEATEDLY PUNCHING THE PLAINTIFF IN THE FACE AND HEAD, THE PLAINTIFF CLEARLY BEING THE VICTIM. THE DEFENDANT ARNETT FIRED HIS WEAPON HITTING THE PLAINTIFF IN THE LEFT LEG KNOCKING HIM TO

1 his KNEES, To clearly aim and fire at the victim and
 2 with force that knocked the plaintiff to his knees
 3 isn't non-lethal force, and it isn't meant to stop the
 4 altercation. The plaintiff can feel that his left leg is
 5 broke. At this inmate Murrillo continues to punch the
 6 plaintiff hard.

7 The Defendant ARNETT fire's a second round hitting the
 8 plaintiff a second time while the plaintiff is on his knees
 9 and repeatedly punched in the face and head by inmate Murrillo
 10 with his Mexican buddies chanting on the ground floor. Throw
 11 his — ss off the tier!

12 This inmate being twice the plaintiff size, and the plaintiff
 13 feeling weak, the plaintiff wrap his arms around inmate Murrillo
 14 legs and press my face into Murrillo's legs tight as I
 15 could, cause the plaintiff not being sure of how many
 16 more punches I could withstand.

17 And now the event is starting to clearly show and establish
 18 a violation of the cruel and unusual punishment clause
 19 of the Federal Constitution's eighth amendment based on
 20 excessive use of force by this prison officer.

21 Inmate Murrillo continues punching the plaintiff the punches now
 22 landing on the back of my head and neck. Defendant
 23 ARNETT fire's a third round, this time hitting me on the
 24 right side of my buttock. From inmate Murrillo moving around
 25 trying to get my grip loose from around his legs.

26 Defendant ARNETT as well as all prison officers working
 27 under the color of law, have a sworn duty to provide
 28 all inmates to a safe and none "dangerous-hazardous"

1 Living Condition. This Sworn Duty is also to protect the
 2 Plaintiff from being assaulted by other inmates. In which
 3 this prison officer while acting under color of law, watched
 4 ^{Im} Murrillo travel from one side of the building while his
 5 nose and face was bleeding.

6 And without warning walk up to the Plaintiff as if he was
 7 passing by and without warning sucker punch the Plaintiff
 8 assaulting him with a punch hard enough to daze the
 9 Plaintiff and instead of taking actions to protect the Plaintiff
 10 from the repeatedly punches of assault the contemporary
 11 standards of decency,

12 was violated when the Defendant ARNETT reloaded his 40mm
 13 launcher and maliciously and sadistically used excessive
 14 force by aiming and firing at the Plaintiff a second time
 15 when the Plaintiff was clearly the victim.

16 the Plaintiff unable to stand or defend himself ^{Im} Murrillo
 17 continue to punch the Plaintiff in his face and head (see complaint at
 18 2.5) the Plaintiff on his knees attempting to cover his face
 19 and head from the punches of ^{Im} Murrillo, with Defendant
 20 ARNETT repeatedly reloading his weapon and shooting at
 21 the Plaintiff who is the victim the,

22 standards of being treated with decency by the Defendant
 23 ARNETT have fell well below human. Inmate Murrillo is the
 24 aggressor and not one time has he been shot, or shot at
 25 every shot fired the Plaintiff felt it. After Defendant
 26 ARNETT had fired and shot the Plaintiff (3) three times
 27 and officers were in the building now responding to
 28 the alarm Defendant ARNETT yelled out the window get,

DOWN. THE ABOVE STATED FACT OF COGNIZABLE LEGAL THEORY AND I MUST REPEAT "ACTUAL FACT" OF DEFENDANT ARNETT'S UNNECESSARY AND WANTON INFLECTION OF PAIN ON THE PLAINTIFF BY LOADING AIMING AND FIRING HIS WEAPON A 40mm RIOT GUN AND HITTING THE PLAINTIFF NOT ONCE?

NOT TWICE BUT (3) THREE TIMES, AND THE PLAINTIFF BEING THE VICTIM ON HIS KNEES WHILE A INMATE WAS PUNCHING AND BEATING THE PLAINTIFF IN THE FACE AND HEAD THAT WAS TWICE THE PLAINTIFF'S SIZE IS SURELY A 8TH AMENDMENT CLAIM SUFFICIENT UNDER THE COGNIZABLE LEGAL THEORY OF BALIS/REI V. PACIFICA POLICE DEPT. 901 F. 2d 696, 699 (9TH CIR 1990)

A STATED CLAIM UPON WHICH RELIEF MAY BE GRANTED THEREFORE ENTITLED TO COMPENSATION FOR DAMAGES THE PLAINTIFF SUFFERED FROM BEING BEATING IN THE FACE AND HEAD, WHILE ON HIS KNEES. THE DEFENDANT ARNETT TOOK AIM WITH HIS 40mm LAUNCHER AND MALICIOUSLY AND SADISTICALLY FIRED AT THE PLAINTIFF WITH THE INTENT TO CAUSE (IRREPARABLE INJURY). SEE COMPLAINT AT -- 2

BUT THE DEFENDANT CLAIMS BECAUSE OF INMATE MOVEMENT HE COULD "NOT SEE IF THE ROUND MADE CONTACT?"

BUT THE FIRST ROUND THAT THE DEFENDANT FIRED AT THE PLAINTIFF LEFT LOWER LEG THE PLAINTIFF WAS KNOCKED DOWN ON HIS KNEES AND SUFFERED HIS LEG BEING SHATTERED IN SEVERAL PLACES, IN WHICH THE "TIBIA AND FIBULA" REQUIRED EMERGENCY SURGERY ALONG WITH THE PLACEMENT OF METAL RODS AND PINS.

AND THE PLAINTIFF'S LEFT LEG AND FOOT STILL REQUIRES SURGERY

SEE PLAINTIFF'S MEDICAL FILE

THE STANDARD OF REVIEW APPLIED IN A FEDERAL RULE OF CIVIL

1 Procedure Rule 12(b)(6) Motion to Dismiss is that Judgment
 2 Against a Complaint is appropriate when Assuming all MATERIAL
 3 Facts in the Pleading are not True, in the Plaintiff's case the Material
 4 Facts are very appropriate and very True,
 5 And the non-moving Party has also Respectfully and Sincerely AS
 6 best he can while Acting in Proper stated a claim upon which Relief
 7 MAY be Granted. The non moving is therefore Entitled to Judgment AS
 8 A MATTER OF LAW.

9 The Plaintiff has suffered From use of Excessive Force A CLEAR
 10 VIOLATION of the Plaintiff's 8TH Amendment.

11 HAL ROACH STUDIOS, INC. V. RICHARD FEINER & CO., INC., 896 F.2d 1542,
 12 1550 (9TH CIR. 1990).

13 it is TRUE that Defendant ARNETT used the ONLY MEANS OF FORCE
 14 BE Side's firing a REAL LIVE Round at the Plaintiff, But the Defendant
 15 used His ONLY MEANS OF FORCE on the WRONG INMATE. the Plaintiff WAS
 16 the Victim suffering from being shot to His KNEES, AND being
 17 Punched in the FACE and the head by inmate Murrillo,

18 UNABLE TO Defend Him self, Defendant ARNETT MALICIOUSLY
 19 AND Sadistically fired Three Rounds at the Plaintiff, with
 20 THE EXCUSE of HE ARNETT COULDN'T TELL if the Rounds MADE
 21 CONTACT with the Target because of the inmate MOVEMENT, But
 22 Surely That isn't A REASON to CONTINUE TO RELOAD AND FIRE AT
 23 ESpecially the Victim,

24 the Plaintiff WAS Hit with ALL THREE Rounds that were fired
 25 AT Him and HAVE the Record of Broken Bone's AND Bruises To
 26 PROVE it, This Treatment by the Defendant Resulted in the
 27 DENIAL of the MINIMAL CIVILIZED MEASURE of LIFE'S NECESSITIES
 28 the Plaintiff being Sucker Punched, Hard Enough to DAZE Him,

1 UNABLE TO DEFEND HIMSELF OR EVEN RUN AT THAT SAME TIME
 2 THE DEFENDANT FIRES A ROUND FROM THE 40mm WEAPON KNOCKING
 3 THE PLAINTIFF TO HIS KNEES, AS WELL AS BREAKING THE PLAINTIFF'S LEG
 4 IN SEVERAL PLACES, ALL THE WHILE INMATE MURRILLO CONTINUES
 5 PUNCHING THE PLAINTIFF IN HIS FACE AND HEAD.

6 THE PUNCHES ARE REPEATEDLY,

7 THE PLAINTIFF IS THE VICTIM IN THIS MATTER, YET TO THROW NOT ONE
 8 PUNCH, BUT BEING OBJECTIVELY - SERIOUSLY DEPRIVED OF THE
 9 MINIMAL CIVILIZED MEASURES OF LIFE'S NECESSITIES, THE
 10 PLAINTIFF WILL SUFFER LIFE LONG IRREPARABLE INJURIES AND
 11 WILL NEVER WALK CORRECTLY AGAIN!

12 WHICH HAS SO FAR REQUIRED SEVERAL EMERGENCY SURGERYS
 13 THE PLACEMENT OF METAL RODS AND PLATES TO AND WITH IN THE
 14 PLAINTIFF'S FIBULA AND TIBIA WITH NO POSITIVE RESULTS IN WHICH
 15 THIS SHOULD SATISFY PART ONE OF A TWO PART TEST,

16
 17 THE DEFENDANT ARNETT IS MAKING AN ATTEMPT TO
 18 CLAIM THAT HE DIDNT USE EXCESSIVE FORCE ON THE
 19 PLAINTIFF. AND THE PLAINTIFF FAILS TO STATE A CLAIM FOR
 20 EXCESSIVE FORCE UNDER THE 8TH AMENDMENT IT IS VERY
 21 SIMPLE AND CLEAR, DEFENDANT'S ARNETT'S JOB POST IS THE
 22 CON TOWER WHICH MEANS HE HAS TO QUALIFY WITH ALL
 23 THE WEAPON'S,

24 SO WHEN DEFENDANT ARNETT STATES HE FIRED AT THE
 25 PLAINTIFF BUT BECAUSE OF THE INMATE MOVEMENT HE DIDNT
 26 KNOW IF THE ROUND MADE CONTACT, THATS NOT AN EXCEPTED
 27 EXCUSE TO CONTINUE TO RE-LOAD AND FIRE AT THE PLAINTIFF
 28 WHO IS BEING ASSAULTED AND THE VICTIM, THE 7219

1 MEDICAL REPORT OF INJURY WILL SHOW JUST HOW MANY
 2 TIMES THE PLAINTIFF WAS SHOT AND WHERE. THE FORM 1542
 3 SKIN ASSESSMENT RECORD FROM PALMDALE REGIONAL MED.
 4 CENTER WILL SHOW THAT BESIDES THE BROKE BONES THE OTHER
 5 TWO GUN SHOT WOUNDS WERE SERIOUS ENOUGH TO REQUIRE
 6 DRESSINGS OF SURGICAL GAUZE.

7 MAY I REMIND THE COURT OR BRING THE FACT TO WHOM
 8 IS CONCERN THAT THIS A LEVEL FOUR PRISON AND THERE IS
 9 NO SUCH WEAPON IN THAT GUN TOWER AS A NON-LETHAL
 10 WEAPON. BECAUSE DEFENDANT ARNETT CLAIMS THAT HE
 11 DID NOT SEE THE ROUNDS MAKE CONTACT DOESN'T MEAN
 12 THAT.

13 IT WAS FACT THAT THE ROUNDS DIDN'T MAKE CONTACT AND
 14 THAT IT WAS THE "MINIMAL CIVILIZED MEASURE OF LIVES
 15 NECESSITIES" AND OK TO FIRE YOUR WEAPON AT THE PLAINTIFF
 16 HE'S GETTING BEAT DOWN ANYWAY IT WOULDN'T MATTER
 17 MUCH IF A LITTLE EXCESSIVE FORCE WAS USED ON HIM
 18 HE'S ONLY THE VICTIM.

19 THE PLAUSIBLE INFERENCE IN THE PLAINTIFF'S COMPLAINT
 20 IS THE ALLEGATIONS SHOWING CLEAR EVIDENCE THE UNJUSTIFIED
 21 INFLECTION OF PAIN IN WHICH DEFENDANT ARNETT INFLECTED
 22 ON THE PLAINTIFF, AND WAS DONE BECAUSE ARNETT WAS
 23 NOT SURE IF THE FIRST ROUND MADE CONTACT COMBINED
 24 WITH KNOWINGLY - MALICIOUSLY AND SADISTICALLY.

25 LIFE LONG INJURIES WHICH WAS INFLECTED WITH INTENT
 26 AND MEANT TO BE EXCESSIVE - PHYSICAL FORCE IN WHICH THE
 27 DEFENDANT ARNETT HAS BOASTED AND BRAG OF IN THE FAC.
 28 "C" DINING HALL.

Defendant ARNETT maliciously
and sadistically with intent directed
excessive force at the Plaintiff with the
intent to cause serious injuries

Defendant ARNETT clearly as the Plaintiff was being assaulted
by inmate murrillo, who ~~in fact~~ had blood in his face when
he assaulted the Plaintiff said to be told in the Bld. Murrillo had
just been lat packed AKA: Jumped into the Prison ^{gang} and his next
task was to beat down a Brother and he would be in,
Defendant ARNETT was well aware of what was going on, as
well as what goes on in the building he was the Control Tower
COP.

Defendant ARNETT was well aware of the gang activity in ^{Four}
Bld, he allowed it, Defendant ARNETT on Nov. 28, 2013 watched
inmate murrillo get jump into the gang and ~~allowed~~ him to travel
across the Day Room and up the stairs, where the Plaintiff was
assaulted.

it is well understood that when a Prison Guard is confronted
with a situation such as a disturbance, that Prison Guard
is permitted to use "Reasonable Force" to restore order and
prevent a threat to the inmate.

STEVENS ON V. HARMON, No. 07-cv-277 W (LC), 2009,
WL 667198 at *4 (S.D. CAL MAR. 13, 2009)

AFF'd 406 F. App'x 97 (9th Cir. 2010),

in the Plaintiff's situation, this present case Defendant
ARNETT was confronted with the situation of a disturbance
when ARNETT watched inmate murrillo get jumped into a gang
shortly after ARNETT ^{allowed} inmate murrillo to travel up to the top tier
on the other side of the building,
where ~~P/m~~ murrillo approached the Plaintiff normally as if

1 He was just passing, only with a bloody nose, and with
 2 the element of surprise and continue punching the
 3 plaintiff never allowing the plaintiff to regain a clear
 4 head to attempt to defend himself.

5 The plaintiff mistaken with his words in the original
 6 complaint by calling an assault mutual combat, when
 7 the plaintiff came by his injuries by way of being assaulted
 8 by inmate Murrillo, and the excessive use of force by
 9 defendant Arnett.

10 The altercation was very serious, but surely not mutual
 11 combat for reason of the fact, the plaintiff never even threw
 12 a punch, which makes the situation an assault with the plaintiff
 13 being the victim. (see complaint at 2, 5, 11)

14 Defendant Arnett there fore claims he reasonably perceived a threat
 15 to the institutional order, and inmate safety, and necessitated use
 16 of force. only thing plausible inference is defendant Arnett
 17 necessitated the use of force on "the wrong inmate",
 18 the defendant should have aimed at the inmate who
 19 was the aggressor.

20 After the first shot was fired knocking the plaintiff down
 21 to his knees, inmate Murrillo continue to beat the plaintiff
 22 in the face and about the head at which time defendant
 23 Arnett has well cross over the line of violating the plaintiff's
 24 8th amended right to be free from cruel and unusual
 25 punishment, maliciously and sadistically used "excessive force"
 26 when the defendant after the first round was fired at the
 27 plaintiff the defendant claim he couldn't tell if the first shot
 28 made contact because of inmate movement. He continued

1 To Reload Aim AND FIRE AT NO-ONE EXCEPT THE PLAINTIFF
 2 AND WHAT THE DEFENDANT DESCRIBES AS A NON LETHAL WEAPON
 3 IS A DEADLY WEAPON, AND THE CONTINUED USE OF
 4 IT FIRING AT THE VICTIM AND HITTING HIM IS A TRUE
 5 SHOWING OF A 8TH AMENDMENT VIOLATION OF CRUEL
 6 AND UNUSUAL PUNISHMENT USE OF EXCESSIVE FORCE.

7
 8 DEFENDANT ARNETT IS SURELY NOT
 9 QUALIFIED FOR QUALIFIED IMMUNITY
 10 FOR HIS ACTIONS.

11
 12 QUALIFIED IMMUNITY STANDARD STATES OFFICIALS SHIELDED
 13 FROM LIABILITY OF CIVIL DAMAGES AS FAR AS THEIR CONDUCT
 14 WHICH DOES NOT CLEARLY VIOLATE ESTABLISHED CONSTITUTIONAL
 15 RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN

16 HARLOW V. FITZGERALD, 457 U.S. 800, 818 (1992)

17 THE SUPREME COURT HAS CONTINUED TO STRESS THE IMPORTANCE OF
 18 RESOLVING IMMUNITY QUESTIONS AT THE EARLIEST POSSIBLE STAGE IN
 19 LITIGATION. HUNTER V. BRYANT 502 U.S. 224, 227 (1991).

20 EVERY PRISON OFFICIAL IS A PERSON WHO UNDER COLOR OF STATE LAW
 21 SUBJECTS OR CAUSES TO BE SUBJECTED.

22 ANY CITIZEN OF THE UNITED STATES TO THE DEPRIVATION OF ANY RIGHTS
 23 PRIVILEGES OR IMMUNITIES SECURED BY THE CONSTITUTION... SHALL BE
 24 LIABLE TO THE PARTY INJURED IN AN ACTION OF LAW SUIT IN EQUAL
 25 OR OTHER PROPER PROCEEDING FOR REDRESS.

26 THE DEFENDANT ARNETT PLEADED FACTS DEMONSTRATING THE CAUSATION
 27 OF THE PLAINTIFF INJURIES WITH UNLAWFUL INTENT ON HIMSELF WHEN
 28 HE STATED THAT HE AIMED FIRED AT THE PLAINTIFF, THE PLAINTIFF FELL

1 to His KNEE'S But the Defendant ARNETT WASN'T SURE if the
2 Round Made Contact, So He Reloaded AND CONTINUED to fire
3 at the Plaintiff who also happen to be the victim AND
4 Black.

5 These acts were not in Accord with ANY LAWS OR
6 Regulations, in fact the Defendant ACTIONS were with
7 Malicious intent AND Discrimination AND ARNETT had
8 Knowledge of His actions there fore He is not entitled to
9 ANY Type of Qualified Immunity OR ANY OTHER Immunity.
10 There is A clear showing of the Plaintiff Constitutional Rights
11 have been violated in the established facts of Defendant
12 ARNETT'S Gross Negligence AND Reckless Dis Regard which Cause
13 the Plaintiff to be SERIOUSLY INJURED from the assault of Inmate
14 Murrillo Beating the Plaintiff in the face and head.

15 Not only Cause the Plaintiff/Victim serious INJURY, it Cause the
16 Plaintiff's 8th Amendment Rights to be violated of Cruel AND unusual
17 Punishment AND use, of EXCESSIVE use of force.

18 under SAUCIER which is clear to A REASONABLE Prison official
19 AND REASONABLE official would have known, AND understood that
20 shooting the victim who WAS being beating about the head AND FACE
21 Making Him the victim

22 the Continued shooting at the victim Repeatedly WAS violating the Plaintiff
23 Rights MULLINEX V. LUNA 577 U.S. —, 136 S.305, 308 (2015),

24 Qualified Immunity Also Permits Reasonable Mistakes AS TO what the
25 Law Requires SAUCIER 533 U.S. At 205, in the Plaintiff's civil action
26 His case AND facts ARE SO far from Reasonable Mistakes (AS DAY AND
27 Midnight) MORE OVER the Plaintiff has clearly Established that
28 Defendant ARNETT clearly Maliciously with Intent Sadistically

1 Violated the Plaintiff 8th Amendment Right of Cruel and
2 Unusual Punishment- use of Excessive Force.

3 And The Defendant ARNETT is not entitled to Qualified
4 Immunity under the first Prong of the Saucier Case
5 OR The Reasonable Mistake Excuse.

6
7
8 I Declare under PENALTY of PERJURY under the LAWS
9 of the State of CALIFORNIA The foregoing is true and
10 Correct and that this Declaration was Executed on,
11 SEPTEMBER 29, 2016 At Los Angeles California.

12
13
14
15 Dated: 9-29-16

SIGNATURE: Kevin Simmons

KEVIN SIMMONS P-23896
L.A.C.S.P. C2-124
P.O. BOX 4610
LANCASTER, CA. 93539

State Prison
Generated Mail
C-2



10/10



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